

1 DONALD W. FITZGERALD, State Bar No. 095348  
 2 THOMAS A WILLOUGHBY, State Bar No. 137597  
 3 JENNIFER E. NIEMANN, State Bar No. 142151  
 4 FELDERSTEIN FITZGERALD  
 5 WILLOUGHBY & PASCUZZI LLP  
 6 400 Capitol Mall, Suite 1750  
 7 Sacramento, CA 95814  
 Telephone: (916) 329-7400  
 Facsimile: (916) 329-7435  
 dfitzgerald@ffwplaw.com  
 twilloughby@ffwplaw.com  
 jniemann@ffwplaw.com

8 Attorneys for Zacky Farms, LLC  
 9  
 10  
 11  
 12  
 13  
 14  
 15  
 16

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO DIVISION

<p>In re:</p> <p>ZACKY FARMS, LLC, a California limited liability company,</p> <p style="text-align: center;">Debtor-In-Possession.</p>	<p>CASE NO. 12-37961-B-11</p> <p>DCN: FWP-50</p> <p>Date: April 2, 2013        Time: 9:32 a.m.        Courtroom: 32        501 I Street, 6th Floor        Sacramento, CA</p>
---	--

**ORDER GRANTING DEBTOR'S MOTION TO (1) MODIFY ORDER RE FIRST OMNIBUS MOTION TO REJECT CERTAIN EXECUTORY CONTRACTS AND (2) PERMIT ASSUMPTION AND ASSIGNMENT OF PREVIOUSLY REJECTED EXECUTORY CONTRACTS**

19 The motion of Zacky Farms, LLC, Debtor and Debtor in Possession (the "Debtor")  
 20 seeking entry of an order (1) modifying the Court's oral order authorizing the Debtor to reject  
 21 certain executory contracts [docket no. 1370] (the "Rejection Order") and (2) permit the  
 22 assumption and assignment of certain previously rejected executory contracts (the "Motion"),  
 23 came on for hearing on April 2, 2013, at 9:30 a.m., in Courtroom 32 of the United States  
 24 Bankruptcy Court for the Eastern District of California. Thomas A. Willoughby appeared on  
 25 behalf of the Debtor. Other appearances were noted on the record.

26 Based on the Motion, the Declaration of Sean Harding in Support of the Motion, and any  
 27 relevant papers filed in connection with the Motion, arguments of counsel appearing at the  
 28 hearing on the Motion, and findings of fact and conclusions of law stated on the record; the

1 Court having found that due notice of the Motion was properly served on all parties and is  
2 sufficient under the circumstances and that no other notice need be provided; and the Court  
3 having determined that the relief sought in the Motion is in the best interests of the Debtor, its  
4 estate and all parties in interest, and for good and sufficient cause appearing,

5 IT IS HEREBY ORDERED that:

- 6 1. The Motion [docket no. 1323] as provided herein is GRANTED.
- 7 1. The Rejection Order is modified to remove from the Rejection Order the Contracts  
8 identified on Exhibit A hereto;
- 9 2. The Debtor is authorized to assume the Contracts identified on Exhibit A and  
10 assign the Contracts to the Zacky Trust;
- 11 3. The Cure Amounts that must be paid to a Counterparty of a Contract is fixed to be  
12 the Cure Amount listed on Exhibit A;
- 13 4. The Zacky Trust shall pay the Cure Amounts within three business days after the  
14 entry of this order;
- 15 5. The Court has determined that there has been an adequate showing of the ability of  
16 the Zacky Trust to provide adequate assurance of future performance under the Contracts to be  
17 assumed by the Debtor and assigned to the Zacky Trust; and
- 18 2. The 14-day stay under Bankruptcy Rule 6006(d) is waived and the order  
19 permitting the assumption and assignment of the Contracts is deemed effective immediately upon  
20 its entry.

21  
22 Dated: April 17, 2013

23  
24  
25  
26  
27  
28



Thomas C. Holman  
United States Bankruptcy Judge

## EXHIBIT A - CONTRACTS TO BE ASSUMED AND ASSIGNED

<b>Counterparty</b>	<b>Description</b>	<b>Type</b>	<b>Contract Date</b>	<b>Cure Amount</b>
A & F Exports, Inc.	Hold Harmless Agreement and Guaranty/Warranty of Product	Other	2/16/12	\$0.00
Brett Hopkins	Confidentiality Agreement	Other	10/6/08	\$0.00
Distribution Plus Incorporated (DPI)	DPI Pure Food Guaranty and Indemnification Agreement	Other	3/2/10	\$0.00
Dr. Mohammad Azam	Confidentiality Agreement	Other	9/2/11	\$0.00
Dr. Mohammad Azam	Hold Harmless Agreement	Other	9/2/11	\$0.00
Halal Transactions Inc.	Agreement of Halal Certification	Other	8/20/00	\$2,647.20
James D. Sanford	Confidentiality Agreement	Other	3/2/11	\$0.00
James D. Sanford	Consulting Agreement	Other	10/25/11 & 5/7/12	\$40,513.22
James Sanford	Hold Harmless Agreement	Other	3/8/11	\$0.00
Jetro Holdings, Incorporated	Continuing Pure Food Guaranty	Other	Not Dated	\$0.00
Jetro Holdings, Incorporated	Vendor Agreement	Other	Not Dated	\$6,044.48
Newport Meat Company	Hold Harmless Agreement and Guaranty/Warranty of Product	Other	9/21/09	\$0.00
Nicolas & Co., Inc.	Continuing Guarantee and Indemnity Agreement	Other	3/11/11	\$0.00
Porky Products, Inc.	Indemnification and Product Warranty Agreement	Other	9/19/12	\$0.00
R.W. Zant Company	Hold Harmless Agreement and Guaranty/Warranty of Product	Other	8/10/12	\$0.00
Sherwood Food Distributors	Continuing Warranty and Indemnity Agreement	Other	5/11/06	\$0.00
Sysco Corporation and/or its Affiliates	Hold Harmless Agreement and Guaranty/Warranty of Product	Other	9/21/11	\$0.00
The Kroger Co.	Hold Harmless Agreement and Continuing Guaranty	Other	2/1/11	\$0.00
Tyson Foods, Inc.	Pure Food Guaranty and Indemnification Agreement	Other	4/22/11	\$0.00
U.S Foodservice, Inc.	Vendor Agreement	Other	2/18/11	\$0.00
Unisource	Confidentiality Agreement	Other	8/16/10	\$0.00
Unisource	Hold Harmless Agreement	Other	3/8/11	\$0.00
Viskase Companies, Inc.	Confidentiality Agreement	Other	8/18/10	\$0.00
Viskase Companies, Inc.	Hold Harmless Agreement	Other	3/8/11	\$0.00
West Liberty	Continuing Product Guarantee	Other	10/31/11	\$0.00